

**CITY OF HORSESHOE BAY**

**ORDINANCE NO. ORD 07-10-16B**

**CITY PUBLIC RIGHTS-OF-WAY MANAGEMENT ORDINANCE**

**AN ORDINANCE OF THE CITY OF HORSESHOE BAY ESTABLISHING UNIFORM RULES AND REGULATIONS GOVERNING THE CONSTRUCTION AND USE OF CITY PUBLIC RIGHTS-OF-WAY TO BE KNOWN AS THE "CITY PUBLIC RIGHTS-OF-WAY MANAGEMENT ORDINANCE," PROVIDING FOR PERMITTING AND PERMIT FEES FOR INSTALLATION OF FACILITIES IN THE RIGHTS-OF-WAY; ADDRESSING THE RIGHTS AND OBLIGATIONS OF PERSONS WHO INSTALL SUCH FACILITIES, PROVIDING FOR ADMINISTRATION AND ENFORCEMENT, CONSTRUCTION OBLIGATIONS, CONDITIONS OF OCCUPANCY OF RIGHTS-OF-WAY; INSURANCE REQUIREMENTS, INDEMNITY, SEVERABILITY, PENALTIES FOR UNAUTHORIZED USE OF PUBLIC RIGHTS-OF-WAY, RELOCATION REQUIREMENTS, SEVERABILITY AND EFFECTIVE DATE**

**WHEREAS,** the Rights-of-Way are a valuable public resource that have required and will continue to require substantial investment by the City of Horseshoe Bay ("City"); and

**WHEREAS,** the City desires to structure and implement a fair and orderly process for the authorizations to occupy and use the Rights-of-way in the City to protect the public interest consistent with applicable law; and

**WHEREAS,** the city desires to minimize inconvenience and disruption to the public, provide for the orderly and efficient use of the Rights-of-Way now and in the future and preserve adequate capacity of existing and future uses of the Rights-of-Way; and

**WHEREAS,** in accordance with applicable federal, including, but not limited to, 47 U.S.C. § 253(c) and state laws, including, but not limited to, Tex. Util. Code §§ 14.008 and 54.205, and Tex. Rev. Civ. Stat., art. 1175; the City seeks to exercise to the fullest extent permitted its historical rights to control and manage its Public Rights-of-Way in a competitively neutral and nondiscriminatory basis; and implement certain police power regulations regarding the use of those Public Rights-of-Way, in accordance with Tex. Loc. Gov't Code § 283.056.

**NOW, THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HORSESHOE BAY, TEXAS:**

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## **I. FINDINGS AND PURPOSE**

The purpose of this Ordinance is to:

- (a) Assist in the management of Facilities placed in, on or over the Public Rights-of-Way in order to minimize the congestion, inconvenience, deterioration, visual impact and other adverse effects, and the costs to the citizens resulting from the placement of facilities within the Public Rights-of-Way;
- (b) Govern the use and occupancy of the Public Rights-of-Way;
- (c) Assist the City in its efforts to protect the public health, safety and welfare;
- (d) Conserve the limited physical capacity of the Public Rights-of-Way held in public trust by the City;
- (e) Preserve the physical integrity of the streets and highways;
- (f) Control the orderly flow of vehicles and pedestrians;
- (g) Keep track of the different entities using the Public Rights-of-Way to prevent interference between them;
- (h) Assist in scheduling common trenching and street cuts; and
- (i) Protect the safety, security, appearance, and condition of the Public Rights-of-Way.

This Ordinance may be referred to as the "City Public Rights-of-Way Management Ordinance."

## **II. AUTHORITY; SCOPE**

This Ordinance applies to all Persons that place Facilities in, on or over Public Rights-of-Way. Compensation for use of the Public Rights-of-Way shall be paid in accordance with all applicable law, including, but not limited to, cable and video service providers, in accordance with the Federal Cable Act, 47 USC § 541, *et seq.* and Chapter 66 of the Texas Utility Code; for certificated telecommunication providers, Chapter 283 of the Texas Local Government Code; for distributors of natural gas or as otherwise applicable. Texas Tax Code § 182.025; and/or in accordance with Tex. Civil Statute, Art. 1175(1), all as applicable.

## **III. DEFINITIONS**

In this Chapter the following words, terms and phrases shall have the following meanings:

- (a) *Cable or Video Service Provider (or CVSP)* means the same as defined in Texas Utility Code, § 66.002 (3) and (110 [any entity that has been issued a certificate of franchise authority by the Public Utility Commission of Texas to offer cable or video service].
- (b) *Certificated Telecommunications Provider (or CTP)* means the same as defined in Tex. Loc. Gov't § 283.002(2) [any entity that has been issued a certificate of convenience and

necessity, certificate of operating authority, or service provider certificate of operating authority by the Texas Public Utility Commission to offer local exchange telephone service].

(c) *City* means The City of Horseshoe Bay, Texas. As used throughout, the term City also includes the designated agent of the City.

(d) *City Property* means all City buildings, infrastructure, bridges, parks, golf courses, parking lots and other real property that is not dedicated for utility or street transportation purposes.

(e) *Direction of the City* means all ordinances, laws, rules, resolutions, and regulations of the City that are not inconsistent with this Ordinance and that are now in force or may hereafter be passed and adopted.

(f) *Director of Public Works or Director* means the City Director of Public Works Department or such Director's designee.

(g) *Facilities* means any and all of the wires, cables, fibers, duct spaces, manholes, poles, conduits, underground and overhead passageways and other equipment, structures, plant and appurtenances and all associated physical equipment placed in, on or under the Public Rights-of-Way.

(h) *Person* means a natural Person (an individual), corporation, company, association, partnership, firm, limited liability company, joint venture, joint stock company or association, and other such entity.

(i) *Public Rights-of-Way* means the same as defined in Tex. Loc. Gov't Code § 283.002(6) and Texas Utility Code, § 66.002 (8), which includes the area on, below, or above a public roadway, highway, street, public sidewalk, alley, waterway, or utility easement in which the municipality has an interest. The term shall also include, to the fullest extent allowed by law, all commonly used property in the City over which private entities have allowed City control and which is used for the placement of Facilities. The term does not include the airwaves above a Public Right-of-Way with regard to wireless telecommunications. The term does not include City Property.

#### **IV. MUNICIPAL AUTHORIZATION REQUIRED**

(a)

(1) Any Person seeking to place Facilities on, in or over the Public Rights-of-Way, shall pay a \$300.00 construction permit application fee (except CTPs and CVSPs and their contractors to the extent exempted by Tex. Loc. Gov't Code, Chapter 283 and Texas Utility Code, Chapter 66, respectively) and shall file an application for such construction permit with the Director and shall abide by the terms and provisions of this Ordinance pertaining to use of the Public Rights-of-Way. If there are additional direct costs to the City in processing the applications, the City may recover those from the Applicant prior to the issuance of the construction permit.

(2) With such application, applicants shall submit to the Director of the Department of Public Works written applications identifying the applicant and all of the applicant's affiliates that may have physical control of Facilities within the Public Rights-of-Way, with a map of the proposed installations, general description of the services to be provided, a construction schedule, and a general description of the effect on Public Rights-of-Way as detailed in Section 6(D) below.

(b) Any Person, except a CTP and a CVSP, prior to placing, reconstructing, or altering Facilities in, on or over the Public Rights-of-Way, must obtain separate municipal authorization from the City, such as a license agreement or franchise, as may be applicable. For use of the Public Rights-of-Way, all users of the Public Rights-of-Way shall compensate the City on the value of the rights-of-way used, being typically either on a gross receipts basis or on a linear foot basis, to the fullest extent allowed by law.

(c) Any Person with a current, unexpired consent, franchise, agreement or other authorization from the City ("Grant") to use the Public Rights-of-Way that is in effect at the time this Ordinance takes effect shall continue to operate under and comply with that Grant (except to the extent the police power regulations in such Grant are inconsistent with this Ordinance, in which event, this Ordinance will control) until the Grant expires or until it is terminated by mutual agreement of the City and the Person, or is terminated as otherwise provided for in law.

(d) Prerequisites to Issuance of Construction Permit - Each Person Must Register With the City. In order for the City to know which Person owns or has physical control over Facilities in the Public Rights-of-Way within the City, each such Person who owns or has physical controls over Facilities shall register with the City and provide the following information at a minimum: (i) Person's name, address, and telephone number(s) and (ii) a twenty-four (24) hour telephone number(s) to a contact person(s) with decision-making authority for the Person. Each Person shall update and keep current his/her registration with the City at all times.

## **V. ADMINISTRATION AND ENFORCEMENT**

(a) The Director shall administer and enforce compliance with this Ordinance.

(b) A Person shall report information related to the use of the Public Rights-of-Way that the Director requires in the form and manner reasonably prescribed by the Director.

(c) The Director shall report to the City Council upon the determination that a Person has failed to comply with this Chapter.

## **VI. CONSTRUCTION OBLIGATIONS**

A Person is subject to reasonable police power regulation of the City to manage its Public Rights-of-Way in connection with the excavation, construction, installation, expansion, reconstruction, relocation, alteration, removal, maintenance or repair of Facilities in the Public Rights-of-Way, pursuant to the City's rights as a custodian of public property based upon the

City's historic rights under state and federal laws. Such regulations include, but are not limited to, the following:

**(a)** At the City's request, a Person shall furnish the City accurate and complete information relating to the excavation, construction, installation, expansion, reconstruction, relocation, alteration, removal, maintenance or repair of Facilities performed by the Person in the Public Rights-of-Way.

**(b)** A Person may be required to place certain Facilities within the Public Rights-of-Way underground according to applicable City requirements unless the Person makes a compelling demonstration that, in any specific instance, this requirement is not reasonable, feasible or equally applicable to other similar users of the Public Rights-of-Way.

(1) The undergrounding of Facilities is encouraged. In any event, Facilities shall be installed underground where existing utilities are already underground. If there are no Facilities in the Public Rights-of-Way, then the Facilities shall be placed underground. The utility owning the underground Facilities shall make a reasonable determination as to whether space is available to accommodate the new Facilities. A negative determination shall not relieve the Person of the responsibility to underground its Facilities in underground utility areas. To the degree reasonably feasible previously installed aerial Facilities shall be placed underground in concert, and on a cost-sharing basis, with other utilities when such other utilities convert from aerial to underground construction.

(2) Underground conduits and ducts shall be installed in the Public Rights-of-Way between the adjacent property line and the curb line unless otherwise directed by the City.

(3) Conduits and ducts shall be installed parallel with the curb line and cross the Public Rights-of-Way perpendicular to the Public Rights-of-Way centerline unless otherwise directed by the City.

(4) Ducts and conduits shall be installed by trenchless excavation or directional boring when placing these facilities under paved Public Rights-of-Way or a driveway crossing to avoid motor vehicle interruptions, unless otherwise directed by the City.

**(c)** A Person shall perform excavations and other construction in the Public Rights-of-Way in accordance with all applicable City requirements, including the obligation to use trenchless technology whenever commercially economical and practical and consistent with obligations on other similar users of the Public Right-of-Way. The City shall waive the requirement of trenchless technology if it determines that, based upon information provided to the City by the Person, the particular field conditions warrant a waiver. All excavations and other construction in the Public Rights-of-Way shall be conducted so as to minimize interference with the use of public and private property. Any plant or facility placed within the Public Rights-of-Way which is suspended in any manner above ground shall either be placed on existing poles or equipment or be suspended at a height not less than twenty-two (22) feet above ground level, unless otherwise approved by the Director, but in no event less than fifteen (15) feet, except to the

extent state law controls. A Person shall follow all reasonable construction directions given by the City in order to minimize any such interference.

**(d)**

(1) Except as otherwise provided in subsection (3) below, a Person must obtain a permit, as reasonably required by applicable City codes, 72 hours prior to any excavation, construction, installation, expansion, reconstruction, relocation, alteration, removal, maintenance or repair of the Person's Facilities, which 72 hours may be waived or altered by the City for good cause shown by the applicant. All permit applications shall be accompanied by the certification of a professional engineer licensed in Texas that the drawings, plans and specifications submitted with the application comply with applicable technical codes, rules and regulations when required by State law.

(2) Bonding will be required as in Subsection 6(M) below, and Insurance as in Section 8.

(3) A construction permit is not required for routine maintenance that does not require excavation of the Public Rights-of-Way or which does not block traffic lanes or sidewalks during peak traffic periods between 7:00 a.m. to 9:00 a.m. and 4:00 p.m. to 6:30 p.m. on weekdays, or for more than two hours during any non-peak traffic period. The failure of the Person to request and obtain a permit from the City prior to performing any of the above listed activities in, on or over any Public Right-of-Way, except in an emergency as provided for in Subsection (k) below, will subject the Person to a stop-work order from the City and enforcement action pursuant to the City's Code of Ordinances. If the Person fails to act upon any permit within 120 calendar days of issuance, the permit shall become invalid unless extended by the City upon a showing of good cause. Upon expiration of a permit, a Person shall be required to obtain another permit pursuant to the requirements of this Ordinance.

(4) A Person shall furnish the Director with construction plans and maps using the standard format adopted by the Department of Public Works or in a format used in the ordinary course of the Person's business if all the information required by this Ordinance is provided, including the location and proposed routing of new construction or reconstruction at least three (3) business days before beginning construction or reconstruction that involves an alteration to the surface or subsurface of the Public Rights-of-Way, unless otherwise approved by the Director. A Person may not begin construction until the location of new Facilities and proposed routing of the new construction or reconstruction and all required plans and drawings have been approved in writing by the City, which approval will not be unreasonably withheld, taking due consideration of the surrounding area and alternative locations for the Facilities and routing.

(5) These construction plans shall show all features within the Public Rights-of-Way that would affect the placement of the proposed Facilities such as, but not limited to, existing underground and aerial wires or conduits, ducts, poles, wires, pipes, sewerage, water lines, and cables as well as their ownership; traffic signal and street light poles; fire

hydrants; driveways; curbs, inlets and drains; sidewalks, wheelchair ramps; and trees and large shrubs. Drawings shall be drawn to an appropriate scale of no larger than one (1) inch equals fifty (50) feet using the standard format adopted by the Public Works Department or in a format used in the ordinary course of the Person's business if all the information required by this Ordinance is provided. State plan coordinates shall be shown for benchmarks, curb lines, and structures. Drawings shall show horizontal dimensions from the curb line and elevations. If typicals are used, they shall reference the station numbers for which they are to be applied. Traffic control plans shall be in conformance with the latest revision of the Texas Manual on Uniform Traffic Control Devices.

(6) A Person shall use its best efforts to coordinate joint trenching with any other persons and/or public utilities which may be constructed in and along the same Public-Rights-of-Way in a time frame reasonably similar to the persons construction time table. The Department of Public Works may mandate such coordination to the fullest extent allowed by law.

(7) To the extent known, plans for ongoing repair, maintenance, and improvements which involve cutting into paved City roads or streets shall be submitted to the Department of Public Works on an annual basis, no later than April 1 of each year, and updated based upon any changes. This does not require any proprietary information, such as equipment or customer specific information. Such information may be designated confidential, and to the extent allowed by law, will be kept confidential by the City. Alternatively, a Person may meet with the appropriate representative of Public Works each calendar quarter to provide such plans to the extent known.

(8) Once a permit is issued, the Department of Public Works shall be notified in writing or via e-mail or facsimile at least 24 hours in advance that construction in the Public Rights-of-Way is ready to proceed by a person or its representative. Information signs (at least 3 ft. x 3 ft. in size) stating the identity of the person doing the work, their telephone number, and the person's identity and telephone number shall be placed at the location where construction is to occur 48 hours prior to the beginning of work in the Public Rights-of-Way and shall continue to be posted at the location during the entire time the work is occurring and/or until permanent repairs are completed.

(9) Erosion control measures and advance warning signs, markers, cones, and barricades must be in place before work begins. A person may be required to show proof of engineered plans relating to storm water and erosion when applicable or a letter stating a person is not required to obtain such plans. A person shall be responsible for storm water management erosion control that complies with city, state and federal guidelines, as applicable.

(10) Lane closures on major thoroughfares will be limited to between 9:00 a.m. and 4:00 p.m. unless the Director grants prior approval. All lane closures shall comply with the Texas Manual on Uniform Traffic Control Devices for Streets and Highways. Arrow boards will be required on lane closures with all barricades, advance warning signs, and 36 in. reflector cones placed according to the specifications of the City. Excepting emergency conditions, working hours in the Public Rights-of-Way are limited to the



hours between 7:00 a.m. to 6:00 p.m. Monday through Friday, work to be performed after 6:00 p.m. on Monday through Friday or on Saturday must be approved by the Director in advance. Directional boring is permitted only Monday through Friday 7:00 a.m. to 6:00 p.m. No work in the Public Rights-of-Way shall be performed except for emergencies, on Sunday's or on holidays.

(11) Without affecting the legal relationship between Person and its contractors, a Person is responsible for the workmanship and any damages by a contractor or subcontractor.

(12) If additional poles and existing aerial utility routes are required, a Person shall negotiate with the utility company for the installation of the needed poles in accordance with existing statutes and regulations, however if the utility will not install new poles on a reasonable basis, then Person may erect its own poles.

(e) Within fourteen (14) days of completion of excavation, construction, installation, expansion, reconstruction, relocation, alteration, removal, maintenance or repair of Facilities or other work in the Public Rights-of-Way, a Person shall temporarily restore and repair the Public Rights-of-Way. Within thirty (30) calendar days after completion of work in the Public Rights-of-Way, the Person shall permanently restore, replace, relay and/or repair the surface, base, curbs, drainage systems, irrigation systems, landscape treatment or other City Facilities and infrastructure located on, in or under any Public Rights-of-Way that has been excavated, altered or damaged by reason of the excavation, construction, installation, expansion, reconstruction, relocation, alteration, removal, maintenance or repair of the Person's Facilities in accordance with existing standards of the City in effect at the time of the work. Upon a showing of good cause, the City may at its sole discretion extend the time for restoration and repair of the Public Rights-of-Way under this subsection. Unless the Person provides a recent dated photograph or a video tape of the Public Rights-of-Way before the construction, the condition of the Public Rights-of-Way before construction should be presumed in good condition, subject only to reasonable wear and tear, as determined by the Director.

Whenever a Person shall disturb or destroy any right-of-way markers or monuments, it shall restore the same within thirty (30) days after construction has ceased. A Person shall furnish three sets of drawings, blue-line or black-line, detailing the restored monumentation. State Plane Coordinates shall be shown for all monumentation (existing or restored). The drawings shall be signed (original signature), sealed and certified, by a Registered Professional Land Surveyor, and delivered to the Director of Public Works for approval, no later than 30 days after construction has ceased.

(f) Upon failure of a Person to perform any such repair or replacement work after five (5) days written notice has been given by the City to the Person, and in the event repairs have not been initiated during such five day period, the City may repair such portion of the Public Rights-of-Way as may have been disturbed by the Person, its contractors or agents. The City may, at its discretion, for good cause, alter the five day period. Upon receipt of an invoice from the City, the Person shall reimburse the City for the costs so incurred within thirty (30) calendar days from the date of the City invoice.

(g) Should the Director reasonably determine, within one year from the date of the completion of the repair work, that the surface, base, curbs, drainage systems, irrigation systems, landscape treatment or other City Facilities and infrastructure located on, in or under any Public Rights-of-Way requires additional restoration, replacement or repair work to meet existing standards of the City, a Person shall perform such additional restoration, replacement or repair work to the satisfaction of the City, subject to all City remedies as provided herein.

(h) Notwithstanding the foregoing in subsection (g), if the Director determines that the failure of a Person to properly repair or restore the Public Rights-of-Way constitutes a safety hazard to the public, the City may undertake emergency repairs and restoration efforts, after emergency notice has been provided, to the extent reasonable under the circumstances, and the Person failed to respond within a reasonable time specified by the City. Upon receipt of an invoice from the City, a Person shall promptly reimburse the City for all costs incurred by the City within thirty (30) calendar days from the date of the City invoice.

(j) If the Director declares an emergency with regard to the health and safety of the citizens and requests by written notice the removal or abatement of Facilities, a Person shall remove or abate the Person's Facilities by the deadline provided in the Director's request. The Person and the City shall cooperate to the extent possible to assure continuity of service. If the Person, after notice, fails or refuses to act, the City may remove or abate the facility, at the sole cost and expense of the Person, without paying compensation to the Person and without the City incurring liability for damages.

(k) Except in the case of customer service interruptions and imminent harm to property or Persons ("Emergency Conditions"), a Person may not excavate the pavement of a street or Public Rights-of-Way without first complying with City requirements. The City Department of Public Works shall be notified as promptly as possible regarding work performed under such Emergency Conditions, and the Person shall comply with the requirements of City standards and of this Ordinance for the restoration, replacement or repair of the Public Rights-of-Way.

(l) Within one hundred twenty (120) days of completion of each new permitted section of a Person's Facilities, the Person shall supply the City with a complete set of "as-built" drawings for the segment in a format used in the ordinary course of the Person's business to the extent they are prepared in the ordinary course of business or as detailed below, but excluding customer specific, proprietary or confidential information and as reasonably prescribed by the City as is described below, and as may be allowed by law. Such "as-built" maps may be corrected and revised construction plans. In the event the Facilities were built as specified in the originally submitted plans, the Person may certify to the City that there were no changes. The City may, at its discretion, accept in lieu of "as-built" drawings, any reasonable alternative which provides adequate information as to the vertical depth, linear location and size of Facilities in the Public Rights-of-Way, which may include direct on-line access to such information.

To the extent the Person's customary as-built format will confirm without economic impracticability, a Person shall furnish the City "as-built" drawings as follows: Drawings shall show ownership of conduits, ducts, poles, cables, and any other Facilities placed within the Public Rights-of-Way. Drawings shall be drawn to a scale of 1in. equals 20 ft. on 24 in. x 36 in. sheets and 1 in. equals 40 ft. on 11 in. x 17 in. sheets using the standard format adopted by the

Department of Public Works. A Person shall provide one set of all such drawings on diskette in Autocad or Microstation format drawn to full scale and one set of blue or blacklined "as-built" drawings on vellum or Mylar to the Director of the Department of Public Works. State Plane Coordinates shall be shown for bench marks, curb lines, and structures. Drawings shall show horizontal dimensions from the curb line and elevations.

All persons who have Facilities in the Public Rights-of-Way existing as of the date of this Ordinance and who have not provided "as-built" drawings shall do so no later than 60 days after the passage of this Ordinance, unless the Person demonstrates an economic impracticality to provide such "as-built" drawings in the above format. The City may waive such "as-built" maps as to existing facilities, for good cause.

If "as-built" drawings submitted under this section include information expressly designated by the Person as a trade secret or other confidential proprietary information protected from disclosure by state or federal law, the Director may not disclose that information to the public without the consent of the Person, unless otherwise required by an opinion of the Attorney General pursuant to the Texas Open Records Act, as amended, or by a court having jurisdiction of the matter pursuant to applicable law or as otherwise required by law. This subsection may not be construed to authorize a Person to designate all matters as confidential or as trade secrets.

**(m)** Except as to CVSPs to the extent modified by Texas Utility Code, Chapter 66, the Director shall require reasonable bonding requirements of a Person, as are required of other entities that place Facilities in the Public Rights-of-Way. Such bonding amounts will be reasonably determined by the Director depending on several factors as to public safety and risk of harm to persons and property. Such factors include: (1) the nature of the construction project (overhead, trenchless, open trench), (2) type of facility (gas, electric, water, telecommunications, cable, fiber), (3) past construction history of Person in the City as to any damage claims, repairs and timeliness of construction. The City may in a non-discriminatory manner waive or reduce the amount of the bond in the event the Person provides written documentation as to reserves available to compensate the City for damages, and has a two year history of no claims, or damages to City property by the City, or of prompt payment on such claims.

**(n)** In determining whether any requirement under this Section is unreasonable or unfeasible, the Director or his/her designee shall consider, among other things, whether the requirement would subject the Person or Persons to an unreasonable increase in risk or service interruption, or to an unreasonable increase in liability for accidents, or to an unreasonable delay in construction or in availability of its services, or to any other unreasonable technical or economic burden.

**(o)** A Person issued a permit pursuant to this Chapter shall, at all times, employ the standard of care attendant to the risks involved to prevent actions, failures and accidents which may cause damage, injury or nuisance to persons, the public, the Facilities of other Persons, or to any City structures or structures owned by other Persons located in the Public Rights-of-Way. A Person issued a permit pursuant to this Chapter shall observe all federal and state statutes and regulations and all applicable City Ordinances and Safety Codes. A Person issued a permit pursuant to this Chapter shall keep and maintain its Facilities in a safe and suitable condition, and in good order and repair.

## **VII. CONDITIONS OF PUBLIC RIGHTS-OF-WAY OCCUPANCY**

**(a)** In the exercise of governmental functions, the City has first priority over all other users of the Public Rights-of-Way. The City reserves the right to lay sewer, gas, water Facilities, and any other pipe lines or cables and conduits, and to do underground and overhead work, and have attachments and require, restructuring or changes in the City's aerial Facilities in, across, along, over or under a public street, alley or Public Rights-of-Way that may be occupied by a Person, and to change the curb, route or grade of sidewalks and streets, to the fullest extent allowed by law.

**(b)** The City shall assign the location in or over the Public Rights-of-Way among competing users of the Public Rights-of-Way with due consideration to the public health and safety considerations of each user type, and to the extent the City can demonstrate that there is limited space available for additional users, may limit new users, as allowed under state or federal law. As a priority, each user of the Public Rights-of-Way will be allowed one alignment on one side of the street for placement of its Facilities, provided there is adequate space available. In the event an additional alignment(s) or both sides of the street has been requested by a user the Director of Public Works will grant such request, provided there is adequate space available and the requestor has demonstrated the financial or technical impracticability of the use of the requestor's single alignment or use of only one side of the street.

**(c)** If the City authorizes abutting landowners to occupy space under the surface of any public street, alley, or Public Rights-of-Way, the grant to an abutting landowner shall be subject to the rights of the previously authorized user of the Public Rights-of-Way.

**(d)** If the Director gives written notice, a Person shall, at its own expense, temporarily or permanently, remove, relocate, change or alter the position of a Person's Facilities that are in the Public Rights-of-Way within 120 days, except in circumstances that require additional time as reasonably determined by the City based upon information provided by the Person. For projects expected to take longer than 120 days to remove, relocate, change or alter, the Director will confer with the Person before determining the alterations to be required and the timing thereof. The Director shall give notice whenever the City has determined that removal, relocation, change or alteration is reasonably necessary for the construction, operation, repair, maintenance or installation of a City governmental public improvement in the Public Rights-of-Way. This section shall not be construed to prevent a Person's recovery of the cost of relocation or removal from private third parties who initiate the request for relocation or removal, nor shall it be required if improvements are solely for beautification purposes without prior joint deliberation and agreement with the Person. On a non-discriminatory basis, the Director and a Person may agree in writing to different time frames than those provided above if circumstances reasonably warrant such a change.

**(e)** If the Person fails to relocate Facilities in the time allowed by the Director in this Section, the Person may be subject to liability to the City for such delay and as set forth in the City Codes or Ordinance, now or hereafter enacted.

**(f)** A Person may trim trees or other vegetation in or over the Public Rights-of-Way as needed for the safe and reliable operation, use and maintenance of its Facilities. All tree

trimming shall be performed in accordance with standards promulgated by the City. Should the Person, its contractor or agent, fail to remove such trimmings within twenty-four (24) hours, the City may remove the trimmings or have them removed, and upon receipt of a bill from the City, the Person shall promptly reimburse the City for all costs incurred within thirty (30) working days. A Person shall not be responsible for tree trimming or removal, except as to the trimming required to construct, maintain or restore utility service.

**(g)** A Person shall temporarily remove, raise or lower its aerial Facilities to permit the moving of houses or other bulky structures, if the requesting party provides written notice of no less than ten (10) days, except for good cause shown. The expense of these temporary rearrangements shall be paid by the party or parties requesting and benefiting from the temporary rearrangements. The Person may require prepayment or prior posting of a bond from the party requesting the temporary move.

**(h)** In the event a Person's use of the Facilities is discontinued, the Person shall be notified by the City and thereafter shall forthwith remove its Facilities therefrom unless specifically permitted to continue the same, and on the removal thereof shall restore, repair or reconstruct the street area where such removal has occurred, and place the street area where such removal has occurred in the condition prior to the removal, as determined by the City. In the event of failure, neglect or refusal of the Person, after thirty (30) days notice by the Director to repair, improve or maintain such street portion, the City may do such work or cause it to be done, and the reasonable cost thereof as determined by the City shall be paid by the Person and collection may be made by court action or otherwise.

## **VIII. INSURANCE REQUIREMENTS**

**(a)** Except as to CVSPs to the extent modified by Texas Utility Code, Chapter 66, a Person shall obtain and maintain insurance in the amounts reasonably prescribed by the Director with an insurance company licensed to do business in the State of Texas acceptable to the City. A Person shall furnish the Director with proof of insurance at the time of the request for construction permits. The Director reserves the right to review the insurance requirements and to reasonably adjust insurance coverage and limits when the Director determines that changes in statutory law, court decisions, or the claims history of the industry or the Person require adjustment of the coverage. For purposes of this section, the City will accept certificates of self-insurance issued by the State of Texas or letters written by the Person in those instances where the State does not issue such letters, and in all such instances, the Person that self-insures shall provide written documentation as to substantially the same coverage, claims process and defense to the City as would be provided by an insurance carrier as required herein, all as may be detailed in the information provided to the City. However, for the Director to accept such self-insurance coverage the Person must demonstrate by written information that it has adequate financial resources to be a self-insured entity as reasonably determined by the City, based on financial information requested by and furnished to the City. The City's current insurance requirements are described in Exhibit "A" attached hereto.

**(b)** A Person shall furnish to the Director, at no cost to the City, copies of certificates of insurance evidencing the coverage required by this Section. The City may request the deletion, revision or modification of particular policy terms, conditions, limitations or exclusions, unless

the policy provisions are established by a law or regulation binding the City, the Person, or the underwriter. If the City requests a deletion, revision or modification, a Person shall exercise reasonable efforts to pay for and to accomplish the change.

(c) The insurance certificate required under subsection (B) shall:

- (1) name the City and its officers, employees, board members and elected representatives as additional insureds for all applicable coverage;
- (2) provide for 30 days notice to the City for cancellation, non-renewal, or material change; and
- (3) provide that notice of claims shall be provided to the Director by certified mail.

(d) A Person shall file and maintain proof of insurance with the Director. An insurance certificate obtained in compliance with this section is subject to City Attorney approval. The City may require the certificate to be changed to reflect changing liability limits. A Person shall immediately advise the City Attorney of actual or potential litigation that may develop and may affect an existing carrier's obligation to defend and indemnify.

(e) An insurer has no right of recovery against the City. The required insurance policies shall protect the Person and the City. The insurance shall be primary coverage for losses covered by the policies.

(f) The policy clause "Other Insurance" shall not apply to the City if the City is an insured under the policy.

(g) A Person shall pay premiums and assessments for the insurance required under this section. A company which issues an insurance policy has no recourse against the City for payment of a premium or assessment. Insurance policies obtained by a Person must provide that the issuing company waives all right of recovery by way of subrogation against the City in connection with damage covered by the policy.

## **IX. INDEMNITY**

(a) Except as to CTPs and CVSPs, each Person placing Facilities in the Public Rights-of-Way shall agree to promptly defend, indemnify and hold the City harmless from and against all damages, costs, losses or expenses (i) for the repair, replacement, or restoration of City's property, equipment, materials, structures and Facilities which are damaged, destroyed or found to be defective as a result of the Person's acts or omissions, (ii) from and against any and all claims, demands, suits, causes of action, and judgments for (a) damage to or loss of the property of any Person (including, but not limited to the Person, its agents, officers, employees and subcontractors, City's agents, officers and employees, and third parties); and/or (b) death, bodily injury, illness, disease, loss of services, or loss of income or wages to any Person (including, but not limited to the agents, officers and employees of the Person, Person's subcontractors and City, and third parties), arising out of, incident to, concerning or resulting from the negligent or willful act or omissions of the Person, its agents, employees, and/or subcontractors, in the performance of activities pursuant to or authorized under this Ordinance.

Upon commencement of any suit, proceeding at law or in equity against the City relating to or covering any matter covered by this indemnity, to indemnify and hold the City harmless, or to pay said final judgment and costs, as the case may be, the City shall give the Person reasonable notice of such suit or proceeding. The Person shall promptly provide a defense to any such suit or suits, including any appellate proceedings brought in connection therewith, and pay as aforesaid, any final judgment or judgments that may be rendered against the City by reason of such damage suit. Upon failure of the Person to comply with the provisions of this Ordinance, after reasonable notice to the City, the City shall have the right to defend the same and in addition to being reimbursed for any such judgment that may be rendered against the City, together with all court costs incurred therein, the Person shall promptly reimburse the City for attorney's fees, including those employed by the City in such case or cases, as well as all expenses incurred by the City by reason of undertaking the defense of such suit or suits, whether such suit or suits are successfully defended, settled, compromised, or fully adjudicated against the City.

(b) This indemnity provision shall not apply to any liability resulting from the negligence of the City, its officers, employees, agents, contractors, or subcontractors.

(c) The provisions of this indemnity are solely for the benefit of the City and is not intended to create or grant any rights, contractual or otherwise, to any other Person or entity;

(d) To the fullest extent permitted by law, a person shall pay all expenses incurred by the City in defending itself with regard to all damages and penalties provided in this Ordinance. These expenses shall include all out-of-pocket expenses such as attorney's fees, and shall also include the reasonable value of any services rendered by any employees of the City. In the event the City is compelled to undertake the defense of any such suit by reason of a person's failure to perform as hereinabove provided, the City shall have full right and authority to make or enter into any settlement or compromise of such adjudication as the City Council shall deem in the best interest of the City, this without the prior approval or consent of the person with respect to the terms of such compromise or settlement.

## **X. SEVERABILITY**

The provisions of this ordinance are severable. However, in the event this Ordinance or any procedure provided in this Ordinance becomes unlawful, or is declared or determined by a judicial, administrative or legislative authority exercising its jurisdiction to be excessive, unenforceable, void, illegal or otherwise inapplicable, in whole or in part, the remaining and lawful provisions shall be of full force and effect and the City shall promptly promulgate new or revised provisions in compliance with the authority's decision or enactment.

## **XI. GOVERNING LAW**

This Ordinance shall be construed in accordance with the City Code(s) in effect on the date of passage of this Ordinance to the extent that such Code(s) are not in conflict with or in violation of the Constitution and laws of the United States or the State of Texas, subject to the City's ongoing authority to adopt reasonable police power based regulations to manage its Public Rights-of-Way, pursuant to Sections 6 and 7 or as otherwise provided by law.

**XII. UNAUTHORIZED USE OF PUBLIC RIGHTS-OF-WAY**

The City may institute all appropriate legal action to prohibit any Person from using the Public Rights-of-Way unless the Person has complied with the terms of this Ordinance.

**XIII. CONSTRUCTION PERMIT ACCEPTANCE**

Each Construction Permit Application to use the Public Rights-of-Way shall contain, or have attached, the following:

"By this application for a construction permit to use the Public Rights-of-Way, I, as the lawful representative of \_\_\_\_\_ (not the contractor but a representative of the Facility Owner with authority to bind the Owner), hereby agree to use the City's Rights-of-Way under the terms and conditions approved by the City of Horseshoe Bay by City Public Rights-of-Way Management Ordinance (Ordinance No. ORD 07-10-18B).

Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**XIV. EFFECTIVE DATE**

This Ordinance became effective immediately upon passage and publication required by law.

**ADOPTED AND APPROVED** on this the 16<sup>th</sup> day of October, 2007 by a vote of the City Council of the City of Horseshoe Bay

**CITY OF HORSESHOE BAY, TEXAS**

\_\_\_\_\_  
/S/  
**Robert W. Lambert, Mayor**

**ATTEST:**

\_\_\_\_\_  
/S/  
**Toni Vanderburg, City Secretary**



**CITY PUBLIC RIGHTS-OF-WAY MANAGEMENT ORDINANCE  
CONDITIONS FOR USE**

**EXHIBIT A**  
(Section 8)

**Minimum Insurance Requirements**

- (a) Each Person placing Facilities on, in or above the Public Rights-of-Way in the City shall secure and maintain the following liability insurance policies insuring both the Person and the City, and its elected and appointed officers, officials, agents and employees as additional insureds:
  - (1) General liability insurance with limits not less than:
    - (a) Five Million Dollars (\$5,000,000) for bodily injury or death to each person;
    - (b) Five Million Dollars (\$5,000,000) for property damage resulting from any one accident; and
    - (c) Five Million Dollars (\$5,000,000) for all other types of liability.
  - (2) Automobile liability for owned, non-owned and hired vehicles with a limit of Three Million Dollars (\$3,000,000) for each person and Three Million Dollars (\$3,000,000) for each accident.
  - (3) Worker's compensation within statutory limits and employer's liability insurance with limits of not less than One Million Dollars (\$1,000,000).
  - (4) Comprehensive form premises-operations, explosions and collapse hazard, underground hazard and products completed hazard with limits of not less than Three Million Dollars (\$3,000,000).

The liability insurance policies required by this section shall be maintained by the Person from the time the Facilities are being placed on, in or above the Public Rights-of-Way, when the Person is engaged in the removal of its Facilities and until they are fully removed.

- (b) The Director reserves the right to review the insurance requirements and to reasonably adjust insurance coverage and limits when the Director determines that changes in statutory law, court decisions, or the claims history of the industry or the Person require adjustment of the coverage.